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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

RICHARD GAYER,

Plaintiff,

vs.

CITY OF PHOENIX, a Municipal  
Corporation, ; and STREET  
TRANSPORTATION DEPARTMENT,

Defendants.

No. CV 08-1153-PHX-JAT

**ORDER**

Pending before the Court is the Motion to Dismiss of Defendants City of Phoenix (“Phoenix”) and Street Transportation Department (“Department”) (collectively “Defendants”) (Doc. #7) pursuant to Fed. R. Civ. P. 12(b)(1). The Court now rules on that Motion.

**I. FACTUAL BACKGROUND**

The relevant facts, as alleged in the Complaint, are as follows: Relying on 42 U.S.C. § 1983, Plaintiff seeks injunctive relief and declaratory judgment regarding the Defendants’ alleged failure to follow its Speed Hump Program (“Program”) regarding proposed construction at four intersections located in the Willo Historic District. (Plaintiff’s Complaint, Doc. #1.) The Willo Historic District is a residential neighborhood in Central Phoenix, Arizona. (Defendants’ Motion to Dismiss, Doc. #7, p. 1, n. 1.)

The Speed Hump Program at issue provides in pertinent part as follows:

1           The City will designate an ‘affected area,’ usually consisting of  
2           homes along the street where speed humps are proposed.  
3           Residents must obtain support from at least 70 percent of  
4           residents in the affected area, and must obtain support from  
5           every resident whose home is within 100 feet of a proposed  
6           speed hump.

7 (Complaint ¶ 8.)

8           Plaintiff alleges that Defendants failed to follow the above portion of the Speed Hump  
9           Program when it failed to obtain 100 percent support from all owners or residents within 100  
10          feet of the proposed construction.<sup>1</sup> (Complaint ¶¶ 11, 12.) Plaintiff alleges that Defendants  
11          violated the Program by not seeking and obtaining the approval of eight specific additional  
12          properties that are located within 100 feet of the proposed construction. (Id.) Plaintiff  
13          further alleges that the City of Phoenix approved the construction at issue despite its alleged  
14          failure to obtain the required support. (Complaint ¶ 14.)

15          Defendants City of Phoenix and Street Transportation Department move to dismiss  
16          Plaintiff’s action for lack of standing. Defendants assert that, because Plaintiff does not live  
17          within 100 feet of the proposed construction, Plaintiff lacks standing to bring these claims.  
18          Although Plaintiff claims that the proposed construction will impair his access to his property  
19          and reduce his property value, Plaintiff does not allege that he lives within 100 feet of the  
20          proposed construction or that he was entitled to participate in the petition process outlined  
21          in the Speed Hump Program. In their Motion to Dismiss, Defendants also assert that the  
22          Street Transportation Department is a non-jural entity not subject to suit and argue that

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23               <sup>1</sup>Plaintiff takes issue with Defendants’ characterization of the proposed construction  
24               as “speed humps” and states that his allegations do not involve “speed humps” but a  
25               “Streetscape Project of the Willo Neighborhood Association.” The difference in  
26               characterization or name of the proposed construction, however, is not relevant to this  
27               Court’s analysis. The matter at issue here is Defendants’ application of the Speed Hump  
28               Program requirements to the proposed construction, whatever it might be called, and whether  
                Plaintiff has standing to challenge Defendants’ alleged failure to comply with those  
                requirements. For purposes of clarity and uniformity, the Court will refer to the project at  
                issue as “proposed construction.”

1 Plaintiff has failed to state a claim under §1983. The Court will address those arguments  
2 here.

## 3 **II. LEGAL STANDARD AND ANALYSIS**

### 4 **A. NON-JURAL ENTITY**

5 Defendants first argue that the Street Transportation Department should be dismissed  
6 from the action as it is a non-jural entity that is not subject to suit. Defendants argue, as a  
7 threshold matter, that Plaintiff may not bring a civil rights action against this servient  
8 department as it does not enjoy a legal existence separate and distinct from the City of  
9 Phoenix and has not been vested with the authority to sue or be sued. Plaintiff does not  
10 object to this argument in its Memorandum of Law Opposing Defendants' Motion to Dismiss  
11 ("Response") but instead seeks leave to amend its Complaint to substitute, if necessary, the  
12 Director of the Street Transportation Department.

13 This Court agrees that the Street Transportation Department should be dismissed from  
14 this action as it is a non-jural sub-part of the City of Phoenix that is not subject to suit. *See,*  
15 *e.g., Murphy v. Coconino County Sheriff's Dept.*, No. CV 08-8089-PCT-DCG, 2008 U.S.  
16 Dist. Lexis 83840 (Sept. 28, 2008 D. Ariz.)(finding that sub-part of county was not person  
17 amenable to suit under § 1983). To the extent Plaintiff seeks to substitute the Department's  
18 Director for the Department itself, the Court declines to grant such a request as the amended  
19 complaint would also be subject to dismissal for the reasons stated *infra*. *See Saul v. United*  
20 *States*, 928 F.2d 829, 843 (9<sup>th</sup> Cir. 1991)("A district court does not err in denying leave to  
21 amend where the amendment would be futile or where the amended complaint would be  
22 subject to dismissal.")

### 23 **B. STANDING**

24 Defendants also argue that Plaintiff lacks standing to seek injunctive relief and  
25 declaratory judgment based on the alleged violations of the Speed Hump Program.  
26 "Standing is a threshold jurisdictional question in every federal case." *Bruce v. United*  
27 *States*, 759 F.2d 755, 757 (9<sup>th</sup> Cir. 1985). In resolving the issue of standing, courts are bound  
28 by a constitutionally imposed jurisdictional restraint in Article III of the United States

1 Constitution, which limits the “judicial power” of the United States to the resolution of  
2 “cases” and “controversies.” *See Valley Forge Christian College v. Americans United for*  
3 *Separation of Church and State, Inc.*, 454 U.S. 464, 470-71, 102 S. Ct. 752, 757-58, 70 L.  
4 Ed. 2d 700 (1982). When presented with a claim for declaratory judgment, federal courts are  
5 likewise required to ensure the presence of an actual case or controversy. *See Rhoades v.*  
6 *Avon Products, Inc.* 504 F.3d 1151, 1157 (9<sup>th</sup> Cir. 2007)(citations omitted).

7 Courts have viewed the constitutionally imposed restraint found in Article III as  
8 requiring that, in order to have standing, the suing party must have suffered an “injury in  
9 fact.” *Valley Forge Christian College*, 454 U.S. at 473. In order to satisfy Article III’s  
10 standing requirements, Plaintiff bears the burden of proving that (1) he has suffered “an  
11 injury in fact that is (a) concrete and particularized and (b) actual or imminent, not  
12 conjectural or hypothetical; (2) the injury is fairly traceable to the challenged act of  
13 defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be  
14 redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*,  
15 528 U.S. 167, 180-81, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000), citing *Lujan v. Defenders*  
16 *of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

17 Even if the constitutional requirement of an injury in fact is met, however, a suing  
18 party may still lack standing. In addition to the immutable requirements of Article III, “the  
19 federal judiciary has also adhered to a set of prudential principles that bear on the question  
20 of standing.” *Valley Forge Christian College*, 454 U.S. at 474-75. For example, a suing  
21 party must assert his or her own rights and interests and cannot base his or her claim for relief  
22 upon the legal rights or interests of others. *See Warth v. Seldin*, 422 U.S. 490, 498, 95 S. Ct.  
23 2197, 2205, 45 L. Ed. 2d 343 (1975); *see also, Rasmussen v. City of Lake Forest*, 404 F.  
24 Supp. 148, 154 (N.D. Ill. 1975)(“one cannot sue for the deprivation of the civil rights of  
25 others”). Federal courts have generally refrained from adjudicating “‘abstract questions of  
26 wide public significance’ which amount to ‘generalized grievances,’ pervasively shared and  
27 most appropriately addressed in the respective branches.” *Valley Forge Christian College*,  
28 454 U.S. at 475, quoting *Warth*, 422 U.S. at 499-500. Additionally, the suing party’s

1 complaint must fall within the zone of interest to be protected or regulated by the statutory  
 2 provision or the constitutional guarantee in question; in other words, the suing party must fall  
 3 within the class of persons the provision in question was designed to protect. *See Thinket Ink*  
 4 *Info Resources, Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053 (9<sup>th</sup> Cir. 2004).

### 5 **1. Injury In Fact**

6 In the instant matter, Plaintiff alleges that Defendants have violated their own  
 7 Speed Hump Program by failing to include eight specific properties in the petition  
 8 process, by requiring less than 100 percent support from all properties within 100 feet of  
 9 the proposed construction, and by approving the proposed construction at two  
 10 intersections. Plaintiff alleges that, as a result of the above, Defendants have deprived  
 11 him of his rights in violation of the Due Process Clause of the Constitution of the United  
 12 States. Plaintiff's claimed injury is that "[t]he proposed construction will permanently  
 13 restrict and otherwise impair Plaintiff's access to his property and the access of all other  
 14 Willo homeowners to their properties, thereby reducing the value of all Willo properties  
 15 by at least five percent." (Complaint ¶ 15.)

16 Although, for purposes of this Motion, this Court will assume without deciding  
 17 that Plaintiff has suffered an injury in fact, the Court notes that Defendants challenge  
 18 whether Plaintiff has suffered such an injury. An "injury in fact" is an invasion of a  
 19 legally protected interest which is (a) concrete and particularized, and (b) actual or  
 20 imminent rather than conjectural or hypothetical. The injury cannot be abstract but "must  
 21 be both real and immediate." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983).

22 Though this Court does not decide, for purposes of this Motion, whether Plaintiff  
 23 has suffered an injury in fact, the Court is inclined to agree with Defendants that  
 24 Plaintiff's purported injury is not actual or concrete. Plaintiff alleges only in his  
 25 Complaint that his access to his property will be restricted or impaired by the proposed  
 26 construction and that his property value will be reduced by at least 5 percent. Plaintiff  
 27 does not allege that he lives on the street where the proposed construction will take place  
 28

1 nor does he allege how the construction will restrict his access or reduce his property  
 2 value. Because this is a Motion to Dismiss, however, the Court will construe such  
 3 allegations in Plaintiff's favor and assume for purposes of this Motion only that Plaintiff  
 4 has demonstrated the requisite injury. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S.  
 5 at 561 ("At the pleading stage, general factual allegations of injury resulting from the  
 6 defendant's conduct may suffice, for on a motion to dismiss we 'presume that general  
 7 allegations embrace those specific facts that are necessary to support the claim.'") *See*  
 8 *also, Tyler v. Cuomo*, 236 F.3d 1124, 1131 (9<sup>th</sup> Cir. 2000)(citation omitted)("For purposes  
 9 of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts  
 10 must accept as true all material allegations of the complaint, and must construe the  
 11 complaint in favor of the complaining party.").

## 12 **2. Causation and Redressability**

13 Notwithstanding the above, however, the Court does find that Plaintiff has failed to  
 14 demonstrate the requisite causation and redressability elements of his claim. Although  
 15 Plaintiff claims that the proposed construction project will impair his access and reduce  
 16 his property value, he does not allege that he is one of the homeowners or residents who  
 17 should have been petitioned regarding the construction project nor does he assert that, in  
 18 order to comply with the Program, Defendants required his approval. Plaintiff does not  
 19 allege that his residence is located on a street where the construction project is to take  
 20 place, and he does not allege with any certainty that the outcome of the construction  
 21 project would have been different had the City followed the petition process outlined in  
 22 its Speed Hump Regulation Program.

23 In order to establish causation, Plaintiff must demonstrate that the alleged injury is  
 24 "fairly traceable to the challenged action of the defendant, and [is] not the result of the  
 25 independent action of some third party not before the court." *Lujan*, 504 U.S. at 560.  
 26 Here, there is no dispute that Plaintiff does not live within 100 feet of any of the proposed  
 27 construction projects. Plaintiff does not allege that he was entitled to and/or deprived of  
 28

1 the opportunity to participate in the approval process, and there is no dispute that Plaintiff  
2 did not have the right to sign the petitions to approve or disapprove of the construction  
3 project. Plaintiff simply was not affected by any alleged defect in the Defendants'  
4 process. Even assuming that the City had followed the petition process outlined in the  
5 Speed Hump Program, any benefit received by Plaintiff from compliance, *i.e.*, any change  
6 in the outcome or implementation of the project, would be entirely dependent upon the  
7 actions of the additional signatories to the petition. Given the foregoing, this Court finds  
8 that the connection between the Defendants' alleged non-compliance and any alleged  
9 injury is too speculative and tenuous to establish standing in this case.

10       Importantly, not only has Plaintiff failed to demonstrate that his alleged injury is  
11 traceable to Defendants' failure to comply with the Program, he has failed to allege that  
12 the outcome of the process would have been different if the City had followed the  
13 Program's requirements. Indeed, even if this Court were to grant Plaintiff the very relief  
14 he has requested, Defendants would not be required to obtain Plaintiff's approval before  
15 undertaking the construction project at issue. Given Plaintiff's failure to allege that  
16 Defendants' compliance with the Program would necessarily alleviate his injury, the  
17 Court finds that Plaintiff has failed to demonstrate the redressability component needed to  
18 establish standing.

19       In his Response to the Motion to Dismiss, Plaintiff states that he "seeks nothing  
20 more than the promised compliance with the Speed Hump Regulations as applied to the  
21 [Streetscape] Project." (Response, p. 5, 6.) Plaintiff does not allege, however, that the  
22 outcome or implementation of the construction project would have been different had the  
23 City complied with the procedures set forth in the Speed Hump Program or that  
24 compliance would have alleviated his alleged injury. Indeed, Plaintiff's Complaint fails  
25 to make any allegations regarding the resulting outcome had the City sought approval  
26 from or petitioned the additional homeowner or residents identified in Plaintiff's  
27 Complaint.  
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1 To the extent Plaintiff now asserts in his Response that he could cure any such  
2 defect in his Complaint with his proposed amendment, this Court does not agree. In his  
3 Response, Plaintiff asserts specifically that the Complaint could be amended to include  
4 allegations regarding a “comprehensive survey of the entire neighborhood” showing “less  
5 than 43 percent of those surveyed supported the Project.” (Response, p. 6.) Such an  
6 allegation, however, would still fail to show the likelihood that Plaintiff’s alleged injury  
7 would be cured by the requested relief.<sup>2</sup> The consensus of the neighborhood, or more  
8 accurately the consensus of those individuals Defendants were able to survey, is simply  
9 not relevant to Plaintiff’s claim. Plaintiff’s proposed amendment again fails to recognize  
10 that the only relevant individuals for purposes of such an inquiry are those individuals  
11 within 100 feet of the construction project and whose approval was required pursuant to  
12 the Program. Because Plaintiff makes no allegation regarding these particular individuals  
13 or their position on the construction project, Plaintiff cannot show that his alleged injury  
14 would be redressed by the relief he seeks.

15 Even if Defendants had complied with the Speed Hump Program, it is indisputable  
16 that Plaintiff would have had no input into or ability to affect Defendants’ decision to  
17 implement the construction process at issue. Given that Plaintiff is not within the group  
18 of residents whose approval was required under the Speed Hump Program, Plaintiff does  
19 not have standing to pursue a claim that Defendants failed to follow the requirements of  
20 that Program. *See, e.g., Bailey v. Patterson*, 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512  
21 (1962)(one cannot sue for the alleged deprivation of the civil rights of others).

22 Given these circumstances, the Court views Plaintiff’s Complaint as something  
23 more akin to a generalized grievance. Generalized grievances, however, are not sufficient  
24 to establish standing. *Lance v. Coffman*, 549 U.S. 437, 127 S. Ct. 1194, 1196, 167 L. Ed.  
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27 <sup>2</sup>For this reason, the Court will not grant Plaintiff leave to amend his Complaint as  
28 requested. *See Newland v. Dalton*, 81 F.3d 904, 907 (9<sup>th</sup> Cir. 1996)(district court “need not  
accommodate futile amendments”).



1 2d 29 (2007), quoting *Lujan*, 504 U.S. at 573-74 (“a plaintiff raising only a generally  
2 available grievance about government – claiming only harm to his and every citizen’s  
3 interest in proper application of the Constitution and laws, and seeking relief that no more  
4 directly and tangibly benefits him than it does the public at large – does not state an  
5 Article III case or controversy”). Plaintiff’s discussion regarding the Defendants’ failure  
6 to follow promised procedures – procedures that undisputedly do not involve or apply to  
7 him – further illuminate the nature of his claim. Because Plaintiff has failed to establish  
8 both the constitutional and prudential components of standing, this Court concludes that  
9 dismissal is appropriate.

10 **C. FAILURE TO STATE A CLAIM UNDER § 1983**

11 Finally, Defendants argue that Plaintiff has failed to state a claim under § 1983  
12 because Defendants did not owe Plaintiff any due process much less deprive him of due  
13 process. Finding that Plaintiff lacks standing to pursue a claim under § 1983 against  
14 Defendants, the Court does not reach the issue of whether Plaintiff has failed to state a  
15 claim under § 1983 and denies that portion of Defendants’ Motion to Dismiss as moot and  
16 without prejudice.

17 Accordingly,

18 **IT IS ORDERED GRANTING** Defendants’ Motion to Dismiss (Doc. # 7).

19 DATED this 31<sup>st</sup> day of December, 2008.

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24 James A. Teilborg  
United States District Judge  
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